

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND DIVISION

BRIAN WALKER, JASON WALKER, AND  
ALL OTHERS SIMILARLY SITUATED  
UNDER 29 USC § 216(b),

*Plaintiffs,*  
v.

BYRD OILFIELD SERVICES, LLC, MIKE  
BYRD MANAGEMENT, LLC, BPU  
AVIATION, LLC, KAY HIGHT, MIKE  
BYRD, AND CARY EPLEY,

*Defendants.*

Civil Action No. 7:16-cv-00313-RAJ

**ORDER GRANTING PLAINTIFFS' MOTION FOR NOTICE TO POTENTIAL  
PLAINTIFFS AND CONDITIONAL CERTIFICATION**

Before the Court is Plaintiff's Motion for Notice to Potential Plaintiffs and Conditional Certification. The Court, having considered the Motion, Defendants' Response, and Plaintiffs' Reply is of the opinion the Motion should be, and hereby is, GRANTED. The Court conditionally certifies this matter as a collective action, and ORDERS as follows:

Defendants are ordered to produce the names, last known addresses, email addresses, and telephone numbers ("Employee Information") of the following individuals:

All non-exempt workers employed by Defendants in the United States over the last three years who received Piece Rate Pay, or who received Additional Pay<sup>1</sup> that Defendants excluded from the regular rate to calculate overtime.

Defendants shall provide the Employee Information in an electronic form that can be used by Plaintiffs in mailing out the Court-approved Notice. If the information is not stored electronically, Defendants shall provide it in written form. This information must be produced to Plaintiffs within three business days of the entry of this Order. If Defendants

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<sup>111</sup> "Additional Pay" specifically excludes hourly pay and quantity based pay for casing work, but includes all

fail to provide the Employee Information within three business days of the date this order is signed, the statute of limitations is equitably tolled for each day after the third business day that Defendants fail to provide the Employee Information.

The Court authorizes Plaintiffs to immediately issue the Notice, attached as Exhibit A to the Motion, to those individuals whose names are being provided in compliance with this Order. The Court specifically authorizes Plaintiff to send the Notice and Consent forms out via U.S. mail and electronically by text message and email in the following manner:

- **U.S. Mail:** Plaintiffs shall enclose the Consent Form (Exhibit B) with the Notice to Potential Plaintiffs along with self self-addressed, postage paid return envelope for and U.S. Postal Mailing. The Court permits Plaintiffs to mail the Notice and Consent Form by first class or overnight mail and to send subsequent mailings at Plaintiffs' own expense.
- **Email:** Plaintiffs shall send electronic mail notifications that consists of a message that contains the Notice in the body of the e-mail message with a link to view and sign the Consent Form in the program Right Signature, which allows for secure electronic signature by the person viewing the document; and
- **Text Message:** The text messages sent by Plaintiffs shall include the following language "Byrd Oilfield Overtime Lawsuit: Byrd Oilfield records show that you provided services to Byrd Oilfield and may be eligible to join this lawsuit. Click below for more information," and shall contain links to electronic versions of the Notice of Rights and Consent Form.<sup>2</sup>

The Potential Plaintiffs shall have sixty (60) days from the date Plaintiffs initially mail the Notice and Consent Forms to file a Consent to opt-in to this litigation—unless the Parties

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<sup>2</sup> See *Dempsey v. Jason's Premier Pumping Services, LLC*, No. 1:15-cv-703, (D. Colo Nov. 11, 2015) ("Due to the fact that workers in the oil and gas industry travel frequently and are away from their homes for long periods of time, a brief text message with a link to the Notice of Rights and Consent Form shall also be sent to each worker's cellular phone. Persons receiving the Notice of Rights and Consent Form shall be given the option to sign their forms electronically. The electronic mail notification shall consist of a message that contains the Notice of Rights in the body of the message with a link to view and sign the Consent Form in the program Right Signature, which allows for electronic signature by the person viewing the document. The text message set forth herein will contain more or less the following language: "JPPS Overtime Lawsuit: JPPS records show that you provided services to JPPS and may be eligible to join this lawsuit. Click below for more information" and shall contain links to electronic versions of the Notice of Rights and Consent Form.").

agree to permit late filings or provide good cause regarding why a Consent was not postmarked or received prior to the deadline. A Consent postmarked on the deadline is considered timely. Consents received by mail without postmarks shall be considered timely if received within five business days of the deadline. Plaintiffs shall provide the Court and opposing counsel with a notice indicating the date on which the Notice forms were initially mailed so the Court and the Parties are advised of the beginning of the opt-in period.

Plaintiffs' counsel shall date stamp returned Consents on the day they are received in counsel's office and retain any envelope or other evidence showing the date the Consent form was postmarked, fax-stamped, or received. Within 10 days after the close of the Opt-In Period, Plaintiffs' counsel will file the Consents for the Opt-In Plaintiffs, noting the received date for each individual on the Notice of Filing. For statute of limitations purposes, the received date will be the date the Consent is considered filed with the Court.

Within 30 days after the close of the opt-in period, the Parties are directed to confer pursuant to Rule 16(b) to file a proposed Joint Scheduling Order and Case Management Plan setting forth proposed dates, covering the items set forth in the Court's previous Order Requiring Scheduling Conference, addressing any agreements between the parties regarding discovery, and providing how the case will proceed at trial. If the Parties cannot agree on aspects of the Proposed Scheduling Order or Case Management Plan, they may present their views in the submission for Court determination. The Parties must file the Joint Scheduling Report and Case Management Plan within 14 days of the deadline for the Parties to confer.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2016

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JUDGE PRESIDING